



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 16, 1995

Ms. Lan P. Nguyen  
Assistant City Attorney  
City of Houston  
P.O. Box 1562  
Houston, Texas 77251-1562

OR95-004

Dear Ms. Nguyen:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 29077.

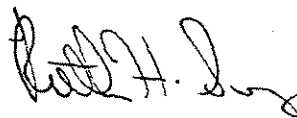
The City of Houston (the "city") received a request for records showing repairs that have had to be made and any other trouble the city has had with a traffic control signal at the intersection of San Jacinto and Holman Streets. The requestor seeks information for the period between May 4, 1992, and May 5, 1994. The city contends that the requested records are excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You have submitted to this office a letter from an attorney to the city alleging that an accident at the intersection was due to the signal malfunctioning. The attorney, who represents a person injured in that accident, alleges that the city failed to inspect, repair, or properly maintain the signal. The attorney has asked for damages of \$150,000 to settle his client's claim against the city. An affidavit from a city claims adjuster indicates that the city is currently investigating the merit of this claim. You also submitted to this office for review records that are responsive to the request. Our review of those records shows that they are related to the subject of the anticipated litigation. Since the city has met its burden of showing that litigation is reasonably anticipated and that the records at issue are related to that litigation, these records may be withheld from disclosure.

In reaching this conclusion, we assume that the opposing party to the litigation has not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing party in the anticipated litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the city's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/KHG/rho

Ref.: ID# 29077

Enclosures: Submitted documents

cc: Ms. Rachel Van Chau  
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4300 Scotland  
Houston, Texas 77007  
(w/o enclosures)